

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Amend Division 1, Subdivision 3, Chapter 6,  
Adding Article 3, Sections 787.0 et seq.  
Title 14, California Code of Regulations  
Re: Incidental Take of Coho Salmon from Timber Operations

I. Date of Initial Statement of Reasons: Published May 11, 2007

II. Dates and Locations of Scheduled Hearings:

(a) Public Hearings:	Date: Friday, June 22, 2007 Location: Resources Building Auditorium, 1 <sup>st</sup> Floor 1416 Ninth Street Sacramento, CA 95814
	Date: Thursday, July 12, 2007 Location: Inter-Mountain Fair of Shasta County 44218 A Street McArthur, CA 96056

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The purpose of the proposed action is establish rules and guidelines to implement Fish and Game Commission policies in accordance with Section 2112 of the Fish and Game Code regarding the issuance of incidental take permits pursuant to Section 2081 of the Fish and Game Code for timber operations or activities that may take coho salmon, a species that is listed as threatened or endangered under the California Endangered Species Act, Fish and Game Code sections 2050, et seq. (CESA). The Fish and Game Commission approved the *Recovery Strategy for California Coho Salmon (Oncorhynchus kisutch)* (February 2004) (Recovery

Strategy), and approved for inclusion specified policies pursuant to Section 2112 of the Fish and Game Code to guide the issuance of incidental take permits under Section 2081 of the Fish and Game Code for timber operations or activities. This article sets forth rules and guidelines to implement those policies. In accordance with section 2112 of the Fish and Game Code, this article specifies conditions and circumstances when: (1) take is prohibited; (2) an incidental take permit is required; and (3) an incidental take permit is not required. This article outlines various ways to obtain incidental take permits for timber operations and activities, including an expedited process for obtaining incidental take permits by certification pursuant to these regulations, and through the normal permitting process set forth in CESA implementing regulations, California Code of Regulations, title 14, section 783.0 *et seq.* The standards for issuance of incidental take permits are the permit issuance criteria set forth in section 2081(b) and (c) of the Fish and Game Code. This article is not intended to create a presumption that any particular timber operation or activity will incidentally take coho salmon. In addition, it does not affect the Department of Fish and Game's (DFG's) authority to authorize take pursuant to any other provision of the Fish and Game Code or any other provision of the California Code of Regulations including, but not limited to, take authorizations issued or approved by the DFG pursuant to section 2835 of the Fish and Game Code.

The proposed action is related to a separate regulatory proposal of the Board of Forestry and Fire Protection (Board). The regulations that the DFG proposes are procedural regulations that in part rely upon the Board's proposed regulations that are the subject of a separate Initial Statement of Reasons. The proposed Board regulations set forth certain definitions and substantive measures in the Forest Practice Rules (FPRs) that enable the DFG to establish certain incidental take permitting procedures that meet the permit issuance criteria under CESA (Fish and Game Code § 2081, subdivisions (b) and (c)) for incidental take permits, including a certification process for providing incidental take permits under CESA for timber operations and activities that may result in take of coho salmon. Currently, no regulatory procedure for the issuance of incidental take permits for coho salmon is integrated with the FPRs. Without such an integrated approach, in addition to applying to the Department of Forestry and Fire Protection (CDF) for approval of timber harvesting plans, timberland owners would have to engage in a lengthy, separate process for obtaining incidental take permits

for coho salmon from the DFG for any timber operations or activities that would result in take of the species. This would involve separate environmental review processes and related costs to both the permit applicant and the DFG.

In 1994, the DFG petitioned the Board to list coho salmon (*Oncorhynchus kisutch*) as a sensitive species under the Board's rules (ref. 14 CCR § 919.12 and 939.12). In the petition, the DFG recommended 1) that watershed assessments be conducted in key streams or reaches to determine the present condition of critical habitat elements, 2) that the timber harvesting plan (THP) process include appropriate consultation, and 3) that site-specific protection measures be developed for the protection of coho salmon habitat. The Board chose not to list coho salmon as sensitive at that time, but proceeded with a study of the effectiveness of the rules for protecting water quality utilizing an interagency, qualitative approach. The 1995 final report indicated that, when considered as a whole, the Board rules were generally effective in protecting water quality, but identified issues related to winter period operations, Class III watercourse protection, and the restorable uses of water for fisheries (Final Report on the Implementation and Effectiveness of the Watercourse and Lake Protection Rules, 1995).

In 1996, the Fish and Game Commission listed coho salmon south of San Francisco as endangered under CESA. Then in 1997, the National Marine Fisheries Service (NMFS) listed coho salmon as threatened throughout its range in California under the Federal Endangered Species Act (ESA).

A comprehensive review of the FPRs, with regard to their adequacy for the protection of salmonid species, was prepared for the Board (Report of the Scientific Review Panel [SRP report], 1999). Following an extensive review of the regulations, "The SRP concluded the FPRs, including their implementation (the 'THP process') do not ensure protection of anadromous salmonid populations" (Report of the Scientific Review Panel, 1999).

In April 2001 the Fish and Game Commission accepted a petition for consideration to list coho salmon as endangered north of San Francisco. In August 2002, the Fish and Game Commission found that coho salmon north of San Francisco to Punta Gorda warrant listing as endangered and that coho salmon from Punta Gorda to the Oregon border warrant listing as threatened. The rulemaking for

these listings were delayed pursuant to Fish and Game Code section 2114 pending the DFG's preparation of the Recovery Strategy. The Fish and Game Commission approved the Recovery Strategy in February 2004, including policies to guide the issuance of incidental take authorizations for timber management activities under CESA. In March 2005 coho salmon were listed under CESA as endangered from San Francisco to Punta Gorda and threatened north of Punta Gorda to the Oregon border.

As a result, the Board adopted changes to the FPRs (Protection for Threatened and Impaired Watersheds, 2000, OAL File No. Z00-0118-14). These rules were adopted to enhance protection of anadromous salmonids and their habitat. Specific objectives of these rules include protection of instream spawning habitat, migratory routes, stream flow, large woody debris, vegetative canopy, shade, and daily and seasonal water temperatures. In adopting these rules, the Board chose to establish a specific date the rule changes would expire. In subsequent rulemaking actions, the Board extended these regulations in 2001, 2002, 2003, 2004, and 2006. These regulations for the protection of anadromous salmonids will expire on December 31, 2007 absent further Board action.

As previously noted, in February 2004, the Fish and Game Commission approved the DFG's Recovery Strategy, including policies to guide the issuance of incidental take authorizations for timber management activities under CESA. As such, pursuant to Fish and Game Code 2112, DFG is required to develop and adopt rules and guidelines to implement those policies. The DFG has developed proposed procedural regulations that implement these policies, which are the subject of this Initial Statement of Reasons. These proposed regulations in part rely upon regulations proposed by the Board.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 702, 2112, Fish and Game Code.

Reference: Sections 2050 *et seq.*, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None

(d) Identification of Reports or Documents Supporting Regulation Change:

Final Environmental Document Analyzing The California Fish And Game Commission's Special Order Relating To Incidental Take Of Coho Salmon North Of San Francisco During The Candidacy Period Sch No. 2001062016 State Of California. Resources Agency; California Department of Fish and Game. December 2001

Status Review of California Coho Salmon North of San Francisco Report to the California Fish and Game Commission. State of California, The Resources Agency, California Department of Fish and Game April 2002

The Fish and Game Commission-approved California Department of Fish and Game *Recovery Strategy for California Coho Salmon (Oncorhynchus kisutch)* (February 2004)

Fish and Game Commission Memorandum, dated February 11, 2004, to California Department of Fish and Game, regarding Consideration of Possible Approval of the Recovery Strategy for Coho Salmon and Consideration of Possible Publication of Notice of Commission Intent to Amend Section 670.5, Title 14, CCR, to Add Coho Salmon to the List of Threatened and Endangered Species

Protection for Threatened and Impaired Watersheds, 2000. Board of Forestry and Fire Protection; OAL File No. Z00-0118-14.

Initial Statement of Reasons for Coho Salmon Incidental Take Assistance, 2007. Board of Forestry and Fire Protection.

Initial Study for Coho Salmon Incidental Take Assistance, 2007. Board of Forestry and Fire Protection.

(e) Public Discussions of Proposed Regulations Prior to Notice publication:

These proposed procedural regulations in part rely upon the substantive regulations the Board is proposing. The two sets of proposed regulations are interrelated, and have been discussed with members of the public on several occasions. Public discussions occurred prior to the Notice publication on the dates and at the

venues indicated as follows:

July 12, 2006 Regular Board meeting  
August 3, 2006 Regular Board meeting  
August 30, 2006 Special Board meeting  
September 13, 2006 Regular Board meeting  
October 4, 2006 Regular Board meeting  
November 8, 2007 Regular Board meeting  
December 6, 2006 Regular Board meeting  
January 5, 2007 Special Board meeting  
January 10, 2007 Regular Board meeting  
February 7, 2007 Regular Board meeting  
March 3, 2007 Board Forest Practice Committee meeting  
March 26, 2007 Special Board meeting  
April 5, 2007 Regular Board meeting

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Guidelines and Substantive Definitions, and Minimization and Mitigation Measures Similar to Forest Practice Rules:

DFG could propose substantive as well as procedural regulations that establish rules and guidelines to implement Fish and Game Commission policies in accordance with Section 2112 of the Fish and Game Code regarding the issuance of incidental take permits pursuant to Section 2081 of the Fish and Game Code for timber operations or activities that may take coho salmon, including establishing the process set forth by this proposed action to obtain incidental take permits by certification. This would result in some duplication of the Board's FPRs and could result in confusion on the part of the regulated public. In addition, if the Board's proposed regulations are approved, this alternative would not be necessary. Therefore, rather than to duplicate the Board's efforts and to simplify the regulations for the affected public, DFG and the Board decided to coordinate their regulatory proposals.

(b) Guidelines for Incidental Take Permitting for Timber Operations (No Certification Process):

DFG could propose procedural regulations that establish rules and guidelines to implement Fish and Game Commission policies in accordance with Section 2112 of the Fish and Game Code regarding the issuance of incidental take permits pursuant to Section 2081 of the Fish and Game Code for timber operations or activities that may take

coho salmon, but do not establish an expedited certification process for obtaining incidental take permits for these activities. However, this would result in additional cost to landowners proposing timber harvesting within the geographic range of coho salmon to engage in a lengthy, separate permitting process with DFG under CESA, involving a separate environmental review process under CEQA.

(c) No Guidelines for Incidental Take Permitting for Timber Operations (No Change Alternative):

DFG could decline to propose procedural regulations that establish rules and guidelines to implement Fish and Game Commission policies in accordance with Section 2112 of the Fish and Game Code regarding the issuance of incidental take permits pursuant to Section 2081 of the Fish and Game Code for timber operations or activities that may take coho salmon. However, this would not meet the requirements of Fish and Game Code section 2112.

(d) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons, than the proposed regulatory action.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action sets forth rules and guidelines regarding the issuance of incidental take permits for coho salmon for timber operations and activities that may result in the take of coho salmon. The guidelines are procedural and would not result in adverse impacts to the environment, except to the extent that they provide an expedited certification process for obtaining incidental take permits from DFG. The certification process would authorize the take of coho salmon, a listed species under CESA. However, the proposed regulations establishing the certification process require compliance with specified substantive regulations of the Board that together with certain of the proposed regulations would minimize and fully mitigate impacts of the timber harvesting activities on coho salmon and meet other permit issuance criteria required by CESA under Fish and Game Code section 2081, subdivisions (b) and (c). Therefore, the proposed regulations incorporate mitigation measures established by the Board in the FPRs to minimize and fully mitigate impacts to coho salmon that would result from use of the certification process to obtain incidental take permits for timber management activities, and thereby avoid any risk of jeopardy to the species from any such permitted activities.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the following statutory categories have been made:



- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed regulatory action to establish rules and guidelines regarding the issuance of incidental take permits for coho salmon for timber operations and activities that may result in the take of coho salmon are procedural and would not directly affect businesses, including the ability of California businesses to compete with businesses in other states, except perhaps to the extent that they provide an expedited certification process for obtaining incidental take permits from DFG. The certification process would authorize the take of coho salmon, a listed species under CESA. The proposed regulations establishing the certification process require compliance with specified substantive regulations of the Board that together would minimize and fully mitigate impacts of the timber harvesting activities on coho salmon and meet other permit issuance criteria required by CESA under Fish and Game Code section 2081 (b) and (c). Therefore, to the extent businesses are engaged in activities that will take coho salmon and choose to obtain incidental take permits through the certification process, the proposed regulatory action may result in adverse economic impacts directly affecting businesses, including the ability of California businesses to compete with businesses in other states. However, to the extent businesses choose to use the certification process, they will save additional costs associated with obtaining incidental take permits through the standard process and the related required environmental review under the California Environmental Quality Act.

Where the DFG authorizes take of coho salmon that is incidental to an otherwise lawful activity, impacts of the taking must be minimized and fully mitigated, and any such mitigation must be monitored for implementation and effectiveness under CESA. The mitigation measures required by CESA for incidental take of coho salmon would result in some increased costs when compared to the status quo under the current FPRs, which includes the federal take prohibition under the ESA. However, the magnitude of such effects is speculative. There are a number of ways that the magnitude can be estimated, but the results will vary depending on the methodology and assumptions involved. Three examples of differing perspectives or methodologies are provided below. Following a review of the methodologies is a conclusion as to the estimates of economic impact.

The first example is based on the perspective that because the majority of such activities are already subject to federal take prohibitions under the federal ESA, they have therefore incurred economic consequences as a result since the federal listings (1996 and 1997). As such, protection provided under CESA should not result in a significant increase in costs or burdens to California businesses. This is particularly true where consistency determinations pursuant to Fish and Game Code section 2080.1 is utilized to obviate the requirement for an incidental take permit under CESA.

The second example is based upon a portion of the analysis of potential costs of recovery of coho salmon relative to timber management activities, which were identified in Section I.13.1.2 of the Recovery Strategy. A currently unquantifiable fraction of these potential costs can potentially be attributed to the listing of the species, as opposed to recovery, if practices result in take of coho salmon under CESA and the mitigation measures that were analyzed are utilized either by regulation or through individual timber harvest review processes to address take of coho salmon. The costs of proposed regulations to guide the issuance of incidental take authorizations were estimated in the Recovery Strategy to be \$151-373 million over a minimum of 25 years, or stated another way, a reduction in timberland values by an estimated 2.8 to 6.9 percent (timberlands are valued at \$1,400 per acre on average), which is a reduction between \$39 and \$97 per acre. However, in reviewing the analysis, the DFG identified some errors in the analysis. As a result of these errors, the estimate reflected in the Recovery Strategy is too high. A more accurate

estimate, based on information to date, is \$204-252 million. This is equivalent to a range of 3.8 to 4.7 percent, which represents a reduction in timberland values (which are valued at \$1400/acre on average) of between \$53 and \$66 per acre. These impacts would be spread over at least 40 years, a typical harvest rotation for commercial timberlands. In addition, these estimates assume that all of the recommended timberland management provisions would be applied to every timber harvesting plan and that none of the measures are already part of the plan. The DFG does not anticipate this will be the case because the proposed policies would be recommended as necessary on a site-specific basis when take of the species would occur or if the CDF were to require them in order to mitigate significant adverse effects on the environment pursuant to the California Environmental Quality Act. Thus, costs would likely be only a fraction of the revised estimates described above.

The third example uses a methodology that yields yet a different estimate of costs regarding timber management activities. This methodology is based on three factors, 1) the regulation's application over at least two to three decades, 2) its applicability to many of the watersheds from San Francisco to the Oregon border, and 3) the estimated level of noncompliance with existing regulations (such as the federal listing, water law, etc.). The state listing of coho salmon south of San Francisco in 1995 resulted in increased costs to timber companies operating within known coho salmon habitat areas. These costs are associated with implementation of mitigation measures for coho salmon and increased regulation. The DFG, in cooperation with CDF developed a programmatic approach, through Fish and Game Code section 2090 (which has since been repealed), to minimize the regulatory costs to businesses. The mitigations, which are listed in "Coho Salmon Biological Opinion and 2090 Agreement for Timber Harvest Plans South of San Francisco Bay (May 7, 1996)," are nearly identical to many of the requirements adopted four years later under the Forest Practice Rules, specifically the Threatened and Impaired Watershed Rules ("Protection for Threatened and Impaired Watersheds, 2000", sections 895, 895.1, 898, 898.2, 914.8, 934.8, 954.8, 916, 936, 956, 916.2, 936.2, 956.2, 916.9, 936.9, 956.9, 916.11, 936.11, 956.11, 916.12, 936.12, 956.12, 923.3, 943.3, 963.3, 923.9, 943.9 and 963.9, Title 14, CCR (which can be found on the Board of Forestry website at: [www.fire.ca.gov/BOF/pdfs/FRLZ00011814.pdf](http://www.fire.ca.gov/BOF/pdfs/FRLZ00011814.pdf)). As a result, the standard mitigations for coho salmon previously developed for the 1995 listing of coho salmon south of San

Francisco have been universally applied north of San Francisco since 2000 (that is, two years prior to the finding that coho salmon north of San Francisco warrant listing) through the FPRs. Only where additional protective measures are proposed by the BOF in its proposed action, and required by the certification process set forth in this proposed action, would there be increased costs as a result of the mitigation measures. Therefore, the annual costs to timber operators north of San Francisco are estimated to be \$180,000/year). According to 2004 data from the State Board of Equalization regarding timber harvest volumes, the total timber harvest volume within the range of coho salmon south of San Francisco is less than 1.7% of the timber harvest volume within the range of coho salmon north of San Francisco. Therefore, the estimated costs to timber operators south of San Francisco are estimated to be roughly 1.7% of \$180,000/year, which is \$3,000/year. Therefore the annual costs to timber operators statewide are estimated to be \$183,000/year or \$5.49 million over 30 years.

Table 1: Estimated cost to timber management.

COUNTY	Non-Federal Forested lands		Coho Streams	THPs <sup>1</sup>	THPs <sup>2</sup> ITP	2081 <sup>3</sup>	Mitigation <sup>4</sup>	
	Total Streams	Coho Streams						
	miles	miles	Percent					
DEL NORTE	332.49	97.92	29.45%	30	4	\$4,417	\$30,922	
HUMBOLDT	3,048.90	347.35	11.39%	110	6	\$6,266	\$43,862	
MENDOCINO	3,441.30	609.99	17.73%	100	9	\$8,863	\$62,039	
SISKIYOU	1,347.15	121.90	9.05%	30	1	\$1,357	\$9,501	
SONOMA	1,060.95	72.20	6.81%	20	1	\$681	\$4,764	
TRINITY	866.83	62.16	7.17%	10	1	\$1,000	\$7,000	
<b>Grand Total</b>	10,260.83	1,311.52	12.78%	300	23	\$22,584	\$158,089	\$180,673 <sup>5</sup>

<sup>1</sup>=average number of individual THPs/county/year (excluding HCPs and NCCPs) within the range of coho salmon

<sup>2</sup>=estimated number of individual THPs needing an incidental take permit/year; based on staff interviews

<sup>3</sup>=estimated cost for incidental take permits for county (F&G Code section 2081)

<sup>4</sup>=estimated increase in county, THP mitigation costs required by 2081

<sup>5</sup>=total cost of incidental take permits and associated mitigation for coho salmon per year

In addition, the DFG modeled the effects of applying the prescriptive mitigation measures specified in the separate regulatory proposal of the Board to evaluate the impacts. This effort relied upon 61 randomly selected timber harvesting plans (THP) from 2002 within the geographic range of coho salmon. Using geographic information system technology the DFG was able to

estimate the extent of expanded Class II Watercourse and Lake Protection Zones (WLPZ) and additional retention for commercial tree species in Class III Channel Zones. Results are:

Sample Size 61 THPs

Average THP size 298.4 acres

Average length Class I/THP 2358'

Average Length Class II/THP  $\geq 1^{\text{st}}$  order 2114'

Average length Class III/THP 6242'

Ave increase in Class II WLPZ/THP1 4.6 acre (1.6%)

Average acreage of Class III channel zone/THP2 1.43 acre (0.5%)

The net effect, on average for any THP where the DFG determines take is likely, when the landowner elects to follow these prescriptions, is that an additional 2.1% of the THP area would be included in Class II WLPZ area or the Class III channel zone. Subject to canopy retention requirements, some trees in the Class II WLPZ would be available for harvest. For THPs in the Southern Subdistrict of the Coast Forest District and Nonindustrial Timber Management Plans there would be additional canopy retention but no additional Class II WLPZ acreage removed from harvesting. Additional tree retention will be required for Class II inner gorges and headwall swales, for which no data are available to analyze the consequences. Additional measures for road management will increase costs but no data exist to quantify the impact. Further, there is considerable potential for project specific flexibility which may ameliorate some costs.

In the five year period from 1999 through 2003 there were 2102 THPs in the eight counties with both timber harvesting and coho salmon. These counties are Del Norte, Humboldt, Trinity, Siskiyou, Santa Cruz, San Mateo, Sonoma and Mendocino. Of these, the DFG estimates 1585 had one or more harvest units where coho salmon are known to be present. There is currently no analysis which describes proximity of these THPs to coho salmon habitat. The DFG currently reviews nearly every THP within watersheds with coho salmon as part of the THP review process and specifically to evaluate the likelihood that take of coho salmon will result. Since coho salmon were listed by the State in March of 2005, the DFG has not yet

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1 The estimate does not include Class II watercourses which are not mapped on U, S, Geological Survey topographic maps because the additional prescriptions would not apply.

2 Assumes a channel zone width of 10'

determined that take is likely for any individual THP. This retrospective is not a reliable indication that future project reviews will reach the same determination in every case. It is likely that the DFG will make determinations of take in a small fraction of THPs and some landowners may determine it in their interest to obtain an incidental take permit even without a DFG determination. Based upon the above it is reasonable to estimate that fewer than 10% of THPs in the future will obtain an incidental take permit for coho salmon from the DFG.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Given the potential for additional economic impacts as identified above, there may be the potential for adverse impacts on new or existing jobs; however, these impacts are unlikely to cause the elimination of existing businesses in California. Whether these potential impacts actually occur depends upon the extent to which timber operations and activities result in take of coho salmon under CESA, the level of compliance with the federal ESA, and the costs, if any, of minimizing and mitigating for take under CESA. Therefore, these impacts are speculative and difficult to estimate at this time.

In addition, there is the potential for creation of jobs in California. The public sector may create new jobs as a result of mitigations such as road treatment, culvert replacement, and habitat enhancement. These jobs would likely be created largely in rural counties with high levels of unemployment.

Also, private environmental consulting firms could benefit economically from assisting in the development and implementation of mitigation measures.

- 3) Cost Impacts on a Representative Private Person or Business:

A representative private person or business may experience economic impacts as described in section (a) above.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

As a project applicant, a state agency may realize costs associated

with projects involving the incidental take of coho salmon as described in section (a) above. However, if the optional streamlined certification process for obtaining incidental take permits from DFG is used, then there would be savings to DFG in staff resources that would otherwise be required to process incidental take permits through the standard permitting process.

The proposed regulatory action is not expected to affect federal funding to the state.

(e) Nondiscretionary Costs/Savings to Local Agencies:

As a project applicant, a local agency may realize costs associated with projects involving the incidental take of coho salmon as described in section (a) above.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

## Informative Digest/Policy Statement Overview

The purpose of the proposed action is to adopt rules and guidelines in accordance with Section 2112 of the Fish and Game Code to implement Fish and Game Commission policies regarding the issuance of incidental take permits pursuant to Section 2081 of the Fish and Game Code for timber operations or activities that may take coho salmon, a species that is listed as threatened or endangered under the California Endangered Species Act, Fish and Game Code sections 2050, et seq. (CESA). The Fish and Game Commission approved the *Recovery Strategy for California Coho Salmon (Oncorhynchus kisutch)* (February 2004), and approved for inclusion specified policies pursuant to Section 2112 of the Fish and Game Code to guide the issuance of incidental take permits under Section 2081 of the Fish and Game Code for timber operations or activities. This article sets forth rules and guidelines to implement those policies. In accordance with section 2112 of the Fish and Game Code, this article specifies conditions and circumstances when: (1) take is prohibited; (2) an incidental take permit is required; and (3) an incidental take permit is not required. This article outlines various ways to obtain incidental take permits for timber operations and activities, including an expedited process for obtaining incidental take permits by certification pursuant to these regulations, and through the normal permitting process set forth in CESA implementing regulations, California Code of Regulations, title 14, section 783.0 et seq. The standards for issuance of incidental take permits are the permit issuance criteria set forth in section 2081 (b) and (c) of the Fish and Game Code. This article is not intended to create a presumption that any particular timber operation or activity will incidentally take coho salmon. In addition, it does not affect the DFG's authority to authorize take pursuant to any other provision of the Fish and Game Code or any other provision of the California Code of Regulations including, but not limited to, take authorizations issued or approved by the DFG pursuant to section 2835 of the Fish and Game Code.

The proposed action is related to a separate regulatory proposal of the Board of Forestry and Fire Protection (Board). The regulations that the DFG proposes are procedural regulations that in part rely upon the Board's proposed regulations that are the subject of a separate Initial Statement of Reasons. The proposed Board regulations set forth certain definitions and substantive measures in the Forest Practice Rules (FPRs) that enable the DFG to establish certain incidental take permitting procedures that meet the permit issuance criteria under CESA (Fish and Game Code § 2081, subdivisions (b) and (c)) for incidental take permits, including a certification process for providing incidental take permits under CESA for timber operations and activities that may result in take of coho salmon. Currently, no regulatory procedure for the issuance of incidental take



permits for coho salmon is integrated with the FPRs. Without such an integrated approach, in addition to applying to the Department of Forestry and Fire Protection CDF for approval of timber harvesting plans, timberland owners would have to engage in a lengthy, separate process for obtaining incidental take permits for coho salmon from the DFG for any timber operations or activities that would result in take of the species. This would involve separate environmental review processes and related costs to both the permit applicant and the DFG.

## **EXHIBIT A**

### **TEXT OF PROPOSED REGULATIONS**

(Click link above to open file)